IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.992 OF 2005
IN
SUIT NO.5757 OF 1998

Smt.Hemlata Keshavji Gala & Ors. ..Plaintiffs.

V/s.

Chunnilal Punshi Satra & Ors. ..Defendants.

And

The Court Receiver, High court,Mumbai. ..Respondents.

WITH

CHAMBER SUMMONS NO.1062 OF 2005
IN
SUIT NO.5757 OF 1998

Smt.Hemlata Keshavji Gala & Ors. ..Plaintiffs.

V/s.

Chunnilal Punshi Satra & Ors. ..Defendants.

Mr.Chirag Balsara i/b Harakchand & Co. for plaintiffs and for applicant in Chamber summons No.992/2005.

Mr.Milind Vasudeo i/b Puranik & Co. for defendants & Applicant in chamber summons No.1062/2005.

CORAM: A.M.KHANWILKAR,J

DATE : SEPTEMBER 28, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. This order will dispose of both the chamber

summons. Essentially, the two chamber summonses are directed against the order passed by the 1st Assistant to Court Receiver dated 29th June, 2005 fixing royalty amount in respect of disputed premises at Rs.6,000/- per month with effect from 26th April, 2005 to be fair and reasonable amount for occupation of the premises in question.

3. The background in which these proceedings have been filed, is that, parties invited order of this court on 1st August, 2001 in Notice of Motion No.2691 of 1999. Under the said order, so far as shop No.6, with which we are presently concerned, defendants or any one or more of them were to be appointed as agent of the Court Receiver on payment of royalty but without security. The order records that the Receiver to fix royalty in respect of the said premises, as if it is used as a shop. It is not necessary to refer to other events except mention that court receiver proceeded to determine royalty in respect of Shop No.6 under order 29th June, 2004, fixing the Royalty amount at Rs.3,000/- per month. That order was questioned before this court by the plaintiffs. This court by order dated 26th April, 2005, allowed the chamber summons by setting aside order of the Court Receiver and relegating the

parties before the court receiver for refixing of royalty amount. What is relevant to note for the present is that the said order as passed clearly records that the premises bearing shop No.6 at Bandra is around 258 sq.ft.. Besides, it proceeds to observe, the Court Receiver, by the earlier order dated 29th June, 2004 fixed the amount of royalty on the basis of equity, even ignoring the report of valuer appointed by him. The court then went on to observe that the royalty fixed by applying the principle of equity would be relevant only where it is a case of tenancy right. With this observation, the order dated 29th June, 2004 passed by the court receiver on the earlier occasion came to be set aside requiring the Court Receiver to refix the royalty amount.

4. However, when the matter went back to the court receiver, by the present order, Court Receiver has once again committed the same mistake, which was frowned upon by this Court on the earlier occasion. Once again the Receiver has noted that the quantum of royalty referred to by the valuer appointed by him is "unfair and inequitable". In view of the order passed by Justice Kamdar dated 26th April, 2005, it was not open to the court receiver to adopt that

reason while determining royalty amount afresh. Whereas, in view of the order dated 1st August, 2001 read with order dated 26th April, 05, the court receiver was obliged to apply the principle of fair return in respect of the said premises as a shop as was mentioned in the report of the valuer. The court receiver instead, has completely by-passed the said principle and fixed the royalty amount now at the rate of Rs.6,000/- per month. There is no basis as to how the figure of Rs.6,000/- per month has been arrived at. Indeed, that has been done keeping in mind principle of equity. However, in view of the orders, which are operating between the parties, passed by this court, such a course was not open to the court receiver.

5. Besides, I find substance in the grievance made on behalf of the plaintiffs that Court Receiver has clearly exceeded his authority in fixing royalty amount with effect from 26th April, 2005 and not from the date when the concerned defendant was put in possession as agent of court receiver. Even to that extent, the order of the court receiver cannot be sustained.

6. The question is what is the correct valuation

to be accepted. The valuer in his report has proceeded on the assumption that the built-up area of the premises in question is around 179 sq.ft., which basis is factually incorrect. From the pleadings as filed by the defendant and the documents on record, it is obvious that the "carpet area" of shop No;6 is specified as 216 sq.ft.- which means the built-up area is 258 sq.ft.. Therefore, the basis adopted by the valuer applying carpet area of 179 sq.ft is inappropriate. In so far as the value of the subject shop, which has been done by the valuer at the rate of Rs.8,000/- also appears to be without any basis. On the other hand, the ready reckoner for the purpose of stamp duty mentions the value of similar premises such as suit shop at Rs.1,41,000/- per sq.mtr.- equivalent of that would be around Rs.13,099/- per sq.ft.. After deducting 10% depreciation, it would come to around Rs.11,789/- per sq.ft.. If it is so, valuation of the premises will be around Rs.30 Lakhs as per the rate mentioned in the ready reckoner at page 41. The fair return available on such property, if expected at the rate of 8%, as suggested by the valuer will have to be accepted as correct, would come to about Rs.24,000/- per month. Whereas, the plaintiffs have offered compensation towards the royalty sum of Rs.22,500/- per month for the same

premises.

7. To get over this position, counsel for the defendants contends that in the fact situation of the present case, such direction would result in ousting the defendants from the premises. Besides they have already invested in the construction of the building and plaintiffs have not contributed any amount. In such situation, the course adopted by the Court Receiver ought to be adopted. It is not possible to accept that submission, in view of the orders operating between the parties dated 1st August, 2001 and 26th April, 2005. Counsel for the defendant would then contend that all issues were left open by Justice Kamdar to be decided by the court receiver for fixing of the royalty and it was open to the court receiver to invoke principles of equity for determining the royalty amount. I have already observed earlier that such course was not open to the court receiver in view of the order passed by Justice Kamdar dated 26th April, 2005. The argument that defendants claim to be the owner of shop No.6 or that no relief of damages or compensation has been claimed in the suit by the plaintiffs is of no avail. It is seen that there are cross-claims between the parties. In the event, defendants were to succeed, defendants

would get refund of the entire amount.

8. In this view of the matter, chamber summons preferred by the plaintiff being Chamber Summons No.992 of 2005 is allowed by determining the royalty amount in respect of shop No.6 at the rate of Rs.20,000/- per month to be paid with effect from the date of the order i.e. 1st August, 2001, when the defendant was put in possession till he continues to occupy the same, as agent of the Court Receiver. Whereas, Chamber summons taken out by the defendants being Chamber Summons No.1062 of 2005 is dismissed. No order as to costs.

9. The Court Receiver will permit the defendants to deposit the differential amount within 8 weeks from today. It is made clear that if the defendants fail to comply with any of the conditions including deposit of the differential amount, as referred above, it will be open to the court receiver to proceed to take over possession and give possession of the premises to the plaintiffs on the same terms and conditions.